

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #9	CCRB Case #: 201704655	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/04/2017 6:58 PM	Location of Incident: [REDACTED]	Precinct: 120	18 Mo. SOL 12/4/2018	EO SOL 12/4/2018	
Date/Time CV Reported Sun, 06/04/2017 7:08 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/08/2017 2:17 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT James Hansen	02167	947062	120 PCT
2. POM Elmer Pastran	06851	956154	120 PCT
3. POM Joseph Caponi	23932	957422	120 PCT
4. POM Philip Iacovino	31528	952876	120 PCT
5. POM Joseph Schneider	31685	953383	120 PCT
6. An officer			120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonvincen Testaccio	17571	953477	120 PCT
2. CPT Tania Kinsella	00000	933044	120 PCT
3. POM Salvatore Balistreri	10442	960199	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT James Hansen	Force: Sergeant James Hansen used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Philip Iacovino	Force: Police Officer Philip Iacovino used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Joseph Schneider	Force: PO Joseph Schneider used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
D.POM Elmer Pastran	Force: Police Officer Elmer Pastran used physical force against § 87(2)(b)	
E.POM Joseph Caponi	Force: Police Officer Joseph Caponi used physical force against § 87(2)(b)	
F. An officer	Force: An officer used a Taser against § 87(2)(b)	

Case Summary

On June 4, 2017, § 87(2)(b) filed the following complaint with the Internal Affairs Bureau (IAB) under original log number 2017-21085. On June 8, 2017, the complaint was received by the Civilian Complaint Review Board (CCRB).

On June 4, 2017, at approximately 6:58 p.m., § 87(2)(b) was having a party for his daughter when he got into a fight with a group of individuals, at § 87(2)(b) in Staten Island. One of his friends, whom the investigation was unable to identify, hit an individual whom the investigation identified as § 87(2)(b) with an umbrella, causing an injury to his face. § 87(2)(b) called the police, and upon their arrival § 87(2)(b) was placed under arrest. While he was being placed in handcuffs, his pregnant wife § 87(2)(b) approached the officers to dispute his arrest. Sergeant James Hansen of the 120th Precinct allegedly pushed her to the ground twice (**Allegation A: Force, § 87(2)(g)**). Upon seeing this, § 87(2)(b) began to resist. He pushed an unidentified officer and slammed Police Officer Pastran to the ground. Police Officer Elmer Pastran, Police Officer Joseph Caponi, Police Officer Philip Iacovino, and Police Officer Joseph Schneider of the 120th Precinct allegedly pushed § 87(2)(b) to the ground, punched him an unspecified number of times, and one of the officers allegedly drive stunned him (**Allegations B, C, D, E and F: Force, § 87(2)(g)**). When he lifted his head to look for § 87(2)(b) an officer allegedly slammed it back down onto the ground (**within Allegations B, C, D, E and F**).

§ 87(2)(b) was ultimately released after being issued Summons number #§ 87(2)(b) by Police Officer Iacovino for disorderly conduct-fighting (Board Review 11).

No video footage was obtained for this incident.

Findings and Recommendations

Allegation A –Force: Sergeant James Hansen used physical force against § 87(2)(b)

According to § 87(2)(b) after the officers' arrived on scene and determined that he was under arrest for hitting § 87(2)(b) with an umbrella, § 87(2)(b) approached Sergeant Hansen. After § 87(2)(b) asked Sergeant Hansen why § 87(2)(b) was being arrested, he pushed § 87(2)(b) with open hands against her chest, causing her to fall to the ground. Three to four seconds later, § 87(2)(b) got up and said that she was pregnant. Sergeant Hansen then brushed § 87(2)(b) aside with the back of his hand and she fell again. § 87(2)(b) did not observe how § 87(2)(b) fell the second time (Board Review 12). § 87(2)(b) s telephone statement is consistent with that of his sworn statement.

§ 87(2)(b) who was sixteen weeks pregnant (as determined by the ISAR) at the time, stated that when the officers began to handcuff § 87(2)(b) she attempted to approach § 87(2)(b) at which point, Sergeant Hansen pushed her by placing one hand on her neck. This caused her to fall to the ground. When § 87(2)(b) saw officers engaging with § 87(2)(b) she turned to see why. Sergeant Hansen looked at her again and pushed her again with both hands which caused her to fall on her back and scrape her arm (Board Review 13).

§ 87(2)(g)

When § 87(2)(b) attempted to get closer to § 87(2)(b) she touched the officers as she tried to get through them, but she was not pushing them. (Board Review 14).

§ 87(2)(b)'s statement is consistent with that of § 87(2)(b) and § 87(2)(b) with the exception that Sergeant Hansen pushed § 87(2)(b) in her chest/shoulder area.

§ 87(2)(b) did not witness any of the interactions between the police and civilians because he was unconscious as a result of being struck with an umbrella.

As per Sergeant Hansen, a crowd of people came within five to ten feet of § 87(2)(b). § 87(2)(b) tried to get closer than the other people in the crowd and was walking at a "faster" pace, ultimately coming within a foot or two of Sergeant Hansen. § 87(2)(b) tried to walk around him to get to § 87(2)(b). Sergeant Hansen walked in front of her, preventing her from passing him, with his hands outstretched, and instructed her to "stand back." He stated that his outstretched hands may have touched her hands or her wrists. § 87(2)(b) eventually complied and stopped approaching at which point Sergeant Hansen turned around and saw his officers placing handcuffs on § 87(2)(b). When he turned back around towards the crowd, he saw § 87(2)(b) on the ground with her back slightly elevated. Sergeant Hansen did not see § 87(2)(b) fall. Sergeant Hansen did not push § 87(2)(b) and did not see another officer do so. He did not brush her aside with the back of his hand, push her by her neck or cause her to fall. § 87(2)(b) then went to sit on the stairs and Sergeant Hansen called an ambulance (Board Review 15).

When Police Officer Testaccio arrived at § 87(2)(b) he and Police Officer Mueller exited their vehicle and ran over to a group of civilians who were yelling at officers who were instructing them to "Get back." Police Officer Testaccio and Police Officer Mueller began to order the crowd to disperse and go home, but they did not initially comply. Around the time Police Officer Testaccio ran over to the crowd, he saw § 87(2)(b) fall to the ground after bumping into a civilian in the group. It appeared that the person that § 87(2)(b) bumped into "knocked" her to the ground. He did not see an officer push § 87(2)(b). Police Officer Testaccio did not know who the closest officer to § 87(2)(b) was when she fell but when she got up, he was one of the closest officers to her. At some point, several people in the group began yelling at Police Officer Testaccio and accused him of pushing her to the ground (Board Review 16).

As per Police Officer Schneider, when they tried to handcuff § 87(2)(b) he began resisting. At that time, three to four members of his family started "rushing" at the officers. Police Officer Schneider stated that § 87(2)(b) ran towards the officers but he did not see any officer deal with § 87(2)(b) in particular to hold her back (Board Review 20).

As per Police Officer Balistreri, he did not see any member of the crowd on the ground. Police Officer Balistreri did not see any officer push or have any physical interaction with § 87(2)(b) (Board Review 21).

Police Officer did not see any officer around him have any physical contact with any member of the crowd but he did hear someone say, "She's pregnant," but he did not know what this

statement was in regards to. After they handcuffed § 87(2)(b) and were leading him to the police car, § 87(2)(b) said, “That’s my wife, that’s my wife.” At the time, Police Officer Iaconvino did not know who he was talking about and he did not see anything happen to any female on scene. He never saw an officer push § 87(2)(b) to the ground and he did not make any physical contact with any individual other than § 87(2)(b) (Board Review 19).

As per Police Officer Caponi, at the point when Police Officer Pastran attempted to place § 87(2)(b) under arrest, his back was turned to the crowd of people and he did not see who came towards them and he did not remember if he saw any civilian make physical contact with any of the officers. Police Officer Caponi did not remember seeing § 87(2)(b) pushed to the ground by any officer (Board Review 18).

As per Police Officer Pastran, as they were placing § 87(2)(b) in handcuffs, a crowd swarmed and rushed them. Other officers kept the crowd, who had come within approximately a couple of feet of them, back. Police Officer did not remember seeing a woman or any other individual on the ground (other than § 87(2)(b)). He did not remember seeing officers have to use force against any other individuals. Police Officer Pastran did not have any interaction with any of the civilians on scene aside from § 87(2)(b) and he did not observe Sergeant Hansen have any physical interaction with any of the civilians (Board Review 17).

Captain Kinsella did not arrive on scene until officers were leading § 87(2)(b) to one of the police vehicles. As per Captain Kinsella, § 87(2)(b) told her she had been pushed and that Police Officer Testaccio had pushed her. (Captain Kinsella only remembered this after reviewing the Incident Supervisor’s Assessment Report (ISAR) during the interview however.) When she interviewed Police Officer Testaccio, he told her that he did not push § 87(2)(b) but that while they were trying to put handcuffs on § 87(2)(b) was “jumping” in their faces, telling them that § 87(2)(b) did not do what he was being accused of, and screaming at the officers and trying to stop them from putting § 87(2)(b) into the police vehicle (Board Review 22).

The ISAR completed by Captain Kinsella, does not explicitly note Police Officer Testaccio as the subject officer, nor does it indicate that Police Officer Testaccio was accused of pushing § 87(2)(b) only that he denied it. The ISAR notes that while officers were placing § 87(2)(b) under arrest, § 87(2)(b) “aggressively” approached “the officer.” Captain Kinsella noted that she informally interviewed Police Officer Testaccio and he denied pushing § 87(2)(b). The ISAR also noted that Captain Kinsella interviewed § 87(2)(b) at the Richmond Medical Center and that she was sixteen weeks pregnant (Board Review 23).

TRI number § 87(2)(b) notes that § 87(2)(b) stated that she was pushed to the ground by Police Officer Testaccio causing pain to her lower back (Board Review 06)

The allegation that an officer pushed § 87(2)(b) is being pleaded against Sergeant Hansen despite the fact that the ISAR and TRI suggest police Officer Testaccio as the officer who pushed § 87(2)(b). § 87(2)(b) provided a photograph of Sergeant Hansen as the officer who pushed § 87(2)(b) (Board Review 06) and § 87(2)(b) also identified Sergeant Hansen as the

officer who pushed her too. Sergeant Hansen also admitted that his outstretched hands may have touched § 87(2)(b)'s hands or her wrists and that when he turned around, he saw § 87(2)(b) on the ground.

It is undisputed that § 87(2)(b) came towards the officers as they were placing § 87(2)(b) under arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B-Force: Police Officer Phillip Iacovino used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation C-Force: Police Officer Joseph Schneider used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation D-Force: Police Officer Elmer Pastran used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation E-Force: Police Officer Joseph Caponi used physical force against § 87(2)(b)

§ 87(2)(b)

As per § 87(2)(b) officers had only placed him in one handcuff when he saw Sergeant Hansen push § 87(2)(b). When he saw this, he pushed an officer and grabbed Police Officer Pastran in the middle of his chest, picked him up and “slammed” his back onto the ground, causing Police Officer Pastran to cut his leg. § 87(2)(b) tried to walk to § 87(2)(b) past Police Officer Pastran, when he was grabbed from behind. Police Officer Pastran, Police Officer Caponi, Police Officer Schneider and Police Officer Iacovino punched him all over his body, including a punch to the back of his neck, an unspecified number of times, before bringing him facedown to the ground. § 87(2)(b) could not describe which officer punched him. (In a follow-up call, § 87(2)(b) alleged that the officers also kicked him, but he did not allege this in either his initial telephone statement or sworn statement). When he raised his head to look at § 87(2)(b) an officer pushed his head down towards the ground, causing a mark to this face. An officer then placed his knee in § 87(2)(b)'s back and finished handcuffing him (Board Review 12).

§ 87(2)(b) telephone statement is consistent with his sworn statement except that he did not state that he “slammed” Police Officer Pastran onto the ground and that he alleged that officers punched him while he was on the ground.

§ 87(2)(b)'s statement is largely consistent with that of § 87(2)(b) Police Officer Caponi, Police Officer Pastran, Police Officer Schneider and Police Officer Iacovino grabbed § 87(2)(b) and threw him on the ground, face down. While he was on the ground an officer placed their foot on § 87(2)(b)'s back to prevent him from getting up (Board Review 13).

§ 87(2)(b) stated that Police Officer Caponi, Police Officer Pastran, Police Officer Schneider and Police Officer Iacovino tackled § 87(2)(b) and pushed him to the ground. § 87(2)(b) was on his stomach on the ground and he was not doing anything with his body.

The officers were consistent that once § 87(2)(b) was in the midst of being handcuffed he started to resist, at which point a crowd approached the officers.

Sergeant Hansen stated that § 87(2)(b) pulled away from the officers during his handcuffing. Police Officer Pastran, Police Officer Caponi or Police Officer Iacovino then grabbed him and took him to the ground. Sergeant Hansen was not aware of the position § 87(2)(b) landed, he did not see any officer use any hand strikes against § 87(2)(b) or see an officer put their foot in § 87(2)(b)'s back, or push his face to the ground. He denied taking any of these actions himself. At that point Sergeant Hansen noticed approximately five individuals approaching them (Board Review 15).

Police Officer Testaccio did not remember if anyone was arrested as a result of this incident and he did not see anyone get placed in handcuffs. Police Officer Testaccio did not see any officers and civilians make contact with one another (Board Review 16).

As per Police Officer Schneider, § 87(2)(b) flailed his arms and pulled away. Officers had to place § 87(2)(b) on the ground to gain control of him because he was flailing his arms. Police Officer Schneider did not know how § 87(2)(b) was brought to the ground because he was paying attention to the family members running towards them. Officers did not have to use hand strikes to restrain § 87(2)(b). He did not see any officer hold him down with their foot or push his head down. Police Officer Schneider also denied using any force against § 87(2)(b) himself (Board Review 20).

Police Officer Balistreri's statement is consistent with the statements of the other officers in that § 87(2)(b) flailed his arms during his apprehension. Police Officer Balistreri saw officers hold § 87(2)(b) by his arms and legs before gracefully laying him face down on the ground. Police Officer Balistreri did not see any officer use hand strikes against § 87(2)(b). He did not see any officer hold his head down to the ground or push his body down with their foot either (Board Review 21).

Police Officer Iacovino's statement regarding § 87(2)(b)'s resistance is consistent with that of Police Officer Schneider and Sergeant Hansen. Police Officer Iacovino grabbed § 87(2)(b) around his torso and took him down to the ground. Police Officer Iacovino, Police Officer Pastran, and Police Officer Caponi fell to the ground with him. Once § 87(2)(b) was on the ground, he stiffened his body for approximately one second and then placed his hands behind his back where upon Police Officer Iacovino handcuffed him (Board Review 19).

Police Officer Caponi observed Police Officer Pastran on the ground with § 87(2)(b) which he believed was the result of § 87(2)(b) having grabbed Police Officer

Pastran's vest, and pulling him down. Police Officer Caponi went down to the ground and pulled § 87(2)(b)'s arms behind his back and handcuffed him. At no point did he or Police Officer Pastran place a knee, or foot on § 87(2)(b)'s back, punch him or push his head down to the ground (Board Review 18).

Police Officer Pastran stated that § 87(2)(b) resisted by flailing his arms and pulling away from his and Police Officer Caponi's grip. When Police Officer Pastran went to grab his hand, § 87(2)(b) slipped his hand out of Police Officer Pastran's and grabbed his vest and pulled him down to the ground causing him to scrape his knee. Neither Police Officer Caponi nor Police Officer Pastran forcibly took § 87(2)(b) to the ground (Board Review 17).

Patrol Guide Section 221-01 states that force may be used when it is reasonable to do so to ensure the safety of a member of service or third person, or to place a person into custody. Any force used must be reasonable under the circumstances. Patrol Guide Section 221-01 states that when determining whether the use of force is reasonable, officers should consider the actions taken by the subject, the duration of the action, the immediacy of the perceived threat or harm to the subject, officers or bystanders, whether subject is actively resisting custody and whether the subject is attempting to evade arrest by flight (Board Review 09).

Patrol Guide Section 221-01 states that force may be used to place a person into custody, and that any force must be reasonable under the circumstances.

§ 87(2)(g)

§ 87(2)(g)

Allegation F-Force: An officer used a Taser against § 87(2)(b)

§ 87(2)(b) alleged that an officer drive stunned him on the upper right part of his arm. While he was in jail, § 87(2)(b) said he felt an itch on his arm. He asked an unidentified officer what the circular mark with a point in the middle of his arm was. The officer told him that it looked like a mark that was caused by an electric shock (Board Review 12).

During a follow-up call to her in person statement, § 87(2)(b) stated that during § 87(2)(b)'s apprehension heard a noise that she described as mechanical and "subtle, but sharp." § 87(2)(b) only heard this noise once. § 87(2)(b) never heard an officer say they were going to use a Taser (Board Review 13).

As per § 87(2)(b)'s sworn statement, she did not know if an officer used a Taser against § 87(2)(b) but stated that he was left with a small mark, shaped like a circle, on his left arm (Board Review 14). During a follow-up call to her in-person statement, § 87(2)(b) stated that she did not hear a mechanical "clicking" sound, but she insisted that officers used a Taser on her son.

None of the officer acknowledged utilizing a Taser against § 87(2)(b) or seeing another officer do so.

The X-26 Taser Data Sheet for June 4, 2017, showed that Police Officer Balistreri's Taser was not discharged., Sergeant Hansen's Taser was discharged twice, once at 9:19 a.m. and 11:21 a.m. and Police Officer Testaccio's was pulled once at 8:05 a.m. (Board Review 08) The X-26 Taser Data Sheet for Police Office Schneider's Taser has been requested from the Firearms and Tactical unit and will be added to the case file upon receipt). Therefore the allegation that an officer drive-stunned § 87(2)(b) is being pleaded against "an officer" because the X-26 data sheet did not show that a Taser was discharged on June 4, 2017, at a time reasonably close to the provided incident time or time of arrest.

§ 87(2)(b) was not hospitalized and he did not seek medical treatment as a result of this incident. There is no documentary or photographic evidence that § 87(2)(b) was Tasered during this incident.

Patrol Guide Section 221-08 states that conducted electrical weapons should be used only against persons who are actively resisting, exhibiting active aggression or to prevent individuals from physically injuring themselves or other persons present. Patrol Guide Section 221-08 defines active resistance as including evasive movements to defeat an officer's attempt at control, including pushing and tensing. Patrol Guide Section 221-08 defines active aggression as a threat or overt act of an assault coupled with the present ability to carry out the threat or assault which indicates that an assault or injury to any person is imminent. It also states that the drive stun mode in particular should not be the primary method of use unless exceptional circumstances exist (Board Review 10).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 03).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 04).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 05).
- Police Officer Joseph Caponi has been a member of the NYPD for two years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Elmer Pastran has been a member of the NYPD for three years and has been a subject of eight allegations against him none of which were substantiated. Police § 87(2)(g)
- Police Officer Phillip Iacovino has been a member of the NYPD for five years and has been a subject of eleven prior allegations against none of which were substantiated. § 87(2)(g)
- Police Officer Joseph Schneider has been a member of the NYPD for five years and has been a subject of three prior allegations against him none of which were substantiated. § 87(2)(g)
- Sergeant James Hansen has been a member of the NYPD for nine years and has been the subject of three prior allegations.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of conviction in New York City (Board Review 01).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of conviction in New York City (Board Review 02).
- As of December 15, 2017, the New York City Officer of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 07).

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date